



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0840]

RIN 1625-AA08

Special Local Regulation; San Juan Bay for El Morro Downwind Challenge, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for certain waters of Bahía de San Juan. This action is necessary to provide for the safety of life on these navigable waters east of Anegado Channel and San Antonio Channel, San Juan, PR, during a paddle board race on January 8, 2022. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port San Juan or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0840 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Christopher O'Connor, Sector San Juan Prevention Department, Waterways Management Division U.S. Coast Guard; telephone 787-729-2374, email Christopher.M.OConnor@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On October 21, 2021, the School of Stand Up Paddle Board (SUP) notified the Coast Guard that it will be conducting a paddle board race from 8 a.m. until 12:00 p.m., on January 8, 2022. The paddle board race is schedule to start from Escuela Deportiva de Vela de Carolina going westward to El Morro, entering the San Juan Bay and finish at Bahía Urbana in San Juan, PR. Hazards from the paddle board race include boarding in shallow rocky waters and bad weather conditions that lead to radical waves, currents, and winds. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with the paddle board race would be a safety concern for anyone within a 100-yard radius of the paddle board race participants.

The purpose of this rulemaking is to ensure the safety of participants, vessels, and the navigable waters within a 100-yard radius of the paddle board race route before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary special local regulation from 8 a.m. until 12 p.m., on January 8, 2022. The School of SUP is sponsoring the El Morro

Downwind Challenge, where approximately 50 competitors will participate in the SUP race around Isleta de San Juan. The regulated area would cover all navigable waters within 100 yards of the paddle board race route from Escuela Deportiva de Vela de Carolina to the San Juan Bay in San Juan, PR. The duration of the zone is intended to ensure the safety of participants, vessels and these navigable waters before, during, and after the scheduled 8 a.m. until 12 p.m. paddle board race. All persons and non-participating vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. The regulated area will affect a small-designated area of Isleta de San Juan and San Juan Bay, during the event and thus is limited in scope. The temporary special local regulation will be enforced for only a total period of 4 hours and thus is limited in time, and during the evening when vessel traffic is normally low.

Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the zone without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period. The rule will allow vessels to seek permission to enter the regulated area. Persons and vessels may still enter, transit through, anchor in, or remain within the regulated area during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this

proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the creation of a temporary special local regulation in conjunction with a regatta or marine parade, lasting 4 hours that would prohibit entry of all non-participant personnel and vessels within 100 yards of the SUP race route to ensure the safety of the participants, participant vessels and the general public during the event. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION**

CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2021-0840 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided.

For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100-- SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T799–0945 to read as follows:

§ 100.T799-0945 Special Local Regulation Safety zones; El Morro Downwind Challenge, from Carolina, PR to San Juan Bay, San Juan, PR.

(a) *Regulated area.* The regulations in this section apply to the following area: Waters around Isleta San Juan including certain waters of San Juan Bay, from surface to bottom, encompassed by a line connecting the following points beginning at Escuela Deportiva de Vela de Carolina with coordinates 18°27'5.4" N, 65°59'44.088 W; thence east to 18°27'35.316"N, 65°59'39.624"W; thence north-west to 18°27'42.48"N, 66°0'2.556"W; thence north to 18°28'3.504"N, 66°0'6.264"W; thence west to 18°28'22.548"N, 66°7'31.044"W; thence south to 18°27'28.476"N, 66°6'59.328"W; thence north-east to 18°27'48.708"N, 66°6'25.092"W at the end point in Bahía Urbana. These coordinates are based on North American Datum 1983.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San

Juan (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participants in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port San Juan or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at (787) 289-2041, or a designated representative via VHF radio on channel 16. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 8 a.m. until 12 p.m., on January 8, 2022.

Gregory H. Magee

Captain, U.S. Coast Guard,

Captain of the Port San Juan

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